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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re MELODY O., a Minor.

HOWARD F. et al.,

Petitioners and Appellants,

v.

THOMAS O.,

Objector and Respondent.

G028526

(Super. Ct. No. AD72200)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Julian Cimbaluk, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Van Deusen, Youmans and Walmsley and Ted R. Youmans for Petitioners and Appellants.

Rich Pfeiffer, under appointment by the Court of Appeal, for Objector and Respondent.

Sharon M. Jones, under appointment by the Court of Appeal, for the Minor.

* * *

Howard and Karla F. appeal from the dismissal of their petition to free three-year-old Melody from the custody and control of her father, Thomas O., on grounds of abandonment (Fam. Code, § 7822).¹ The court dismissed their petition for lack of standing. We affirm.

FACTS

Melody O. was born in February 1998 to Christina H. and Thomas O. The parents were married in July 1997 and separated one year later. Melody and Christina moved in with Christina's parents. The final judgment of dissolution, entered in November 1999, awarded joint physical and legal custody of Melody to both parents, provided for visitation with Thomas, and ordered Thomas to pay child support of \$210 per month. Thomas never paid any support and visited sporadically; his last visit with Melody was February 1999.

In July 2000, Christina decided to place Melody for adoption. She contacted Thomas and told him of her decision, but he refused to consent. Nevertheless, Christina gave custody of Melody to Howard and Karla F., prospective adoptive parents, on July 11. Thomas found out through Christina's parents and objected. The adoption agency contacted the F.'s on July 17 and told them Thomas would not consent to the adoption. The F.'s filed the petition to free Melody from Thomas's custody and control on July 19, alleging Thomas had left Melody in the care of her mother for more than one year without communication or provision for support. (§ 7822, subd. (a).) Christina signed an adoption placement agreement on August 8.

After objecting to the petition, Thomas filed an order to show cause in family court requesting immediate return of Melody to him. The court denied the request for immediate return and set the matter for September 5. In the meantime, Thomas contacted

¹ All statutory references are to the Family Code.

the Newport Beach Police Department with his order for joint custody and asked them to enforce it. On August 9, the police removed Melody from the F.'s home and gave her to Thomas. The family court ordered temporary custody to Thomas pending the outcome of the F.'s petition or further court action.

After several continuances, the petition came before Commissioner Cimbaluk in the probate department on October 24, 2000. The court questioned the F.'s standing to file the petition and scheduled briefing and a hearing on the issue for November 22. By the time of the hearing, the F.'s had filed an adoption petition, and Christina had withdrawn her consent to adoption by the F.'s and filed her own petition to free Melody from Thomas's custody and control. Furthermore, the grandparents had filed an adoption petition in Los Angeles County and wanted standing in all the Orange County proceedings. At the hearing, the court denied standing to the grandparents and deferred the decision whether to consolidate. The court found the F.'s had no standing to file the petition for freedom from custody and control because Melody had not been in their custody for six months or legally placed for adoption with them. The F.'s appeal.

DISCUSSION

Family Code section 7841 provides that “[a]ny interested person may file a petition under this part for an order or judgment declaring a child free from the custody and control of either or both parents.” An “interested person” is “one who has a direct, and not merely consequential, interest in the action [citation], or putting it another way, one who has a real interest in the ultimate adjudication [citation].” (*In re Eugene W.* (1972) 29 Cal.App.3d 623, 630.) As explained below, we conclude the F.'s do not fall within this definition.

In an independent adoption, a child is not considered placed for adoption with the prospective adoptive parents until “[t]he adoption service provider, the prospective

adoptive parents and each birth parent placing the child have signed an adoption placement agreement” (§ 8801.3.) The adoption placement agreement contains disclosures and advisements for the benefit of both the prospective adoptive parents and the birth parents, including consent to the adoption. (*Ibid.*) Once the agreement is signed, the prospective adoptive parents can file a petition for adoption as “person[s] with whom a child has been placed for adoption” (§ 8802, subd. (a)(1)(C).)

When the F.’s filed the freedom petition, Christina had not yet signed the adoption placement agreement, thus, Melody was not yet “placed for adoption” with them within the meaning of the statute. From a legal standpoint, therefore, the F.’s were mere strangers to Melody, i.e., they enjoyed no relationship with her that the law will protect. Christina’s nomination of them to be Melody’s adoptive parents is not enough, standing alone, to confer legal status on them. And rightly so. The statutory scheme contains safeguards against emotional or hasty decisions or those made as a result of intimidation, coercion, or ignorance. Given the Legislature’s recognition of the need for temperance when choosing adoption, we are confident it did not intend that a mere nominee to adoptive parenthood, without more, is an interested person under section 7841.²

The F.’s argue that their interest in the outcome of the freedom petition is much more “direct” and “real” than the interest of the petitioner in *Eugene W.* In *Eugene W.*, the petition for freedom from parental custody and control was filed by a child welfare worker in her individual capacity, which resulted in the termination of parental rights to the appellant’s four children. Appellant claimed the petitioner lacked standing to bring the petition, and therefore the trial court had no jurisdiction to adjudicate the petition. The

² Neither can the F.’s qualify for de facto parent status, which would arguably give them standing to file the petition. (*In re Connie M.* (1986) 176 Cal.App.3d 1225.) “[A] person who assumes the role of parent, raising the child in his own home, may in time acquire an interest in the ‘companionship, care, custody and management’ of that child.” (*In re B.G.* (1974) 11 Cal.3d 679, 692.) The F.’s had Melody in their home for only eight days before the petition was filed.

court found petitioner's allegation that she was a child welfare worker in the county where the children resided was sufficient to indicate "that she had a direct interest in the adjudication of the case." (*In re Eugene W.*, *supra*, 29 Cal.App.3d at p. 631.) The court bolstered its conclusion with the observation that the lack of authority to sue "is equivalent only to a failure to state a cause of action and the defect is not jurisdictional." (*Ibid.*)

We need not decide whether the F.'s interest is more or less significant than that of the child welfare worker in *Eugene W.* There, the standing question was either not raised below or was decided favorably to petitioner; the end result was a fair hearing where "appellant, who was represented by counsel, did receive proper notice, attend all hearings, and all the procedural requirements prescribed by statute were complied with throughout the proceedings." (*Ibid.*) By the time the matter was heard on appeal, the court recognized that "reversal of the judgment on this ground is justified and required only if the error complained of was of prejudicial nature resulting in a miscarriage of justice [citations]"; it concluded reversal was not so justified. (*Ibid.*) Here, the standing question was correctly decided against the petitioner before the hearing on the petition took place.

The F.'s complain the court failed to hear the merits of the petition within the statutorily required 45 days from the time of filing (§ 7870, subd. (b)). But because the petition was properly dismissed, their complaint is moot.³

³ Also moot are the motions to dismiss filed by Thomas and Melody. Thomas requested that we take judicial notice of a dependency proceeding that was filed on behalf of Melody in April 2001 (Orange County Superior Court Case No. DP004597); which request we hereby grant. Thomas and Melody claim the dependency proceeding supersedes this appeal, but the case was dismissed for lack of jurisdiction on June 29, 2001.

DISPOSITION

The judgment of dismissal is affirmed.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

O'LEARY, J.